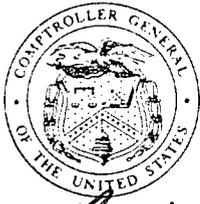


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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

DECISION

Claim For Reimbursement

FILE: B-196298 DATE: April 23, 1980

MATTER OF: John MacIvor - Real estate sales expenses

DIGEST: Employee of Department of Agriculture who left his residence in San Leandro, California, to accept appointment at Tule Lake, California, was transferred from Tule Lake to Hungry Horse, Montana. Employee is not entitled to reimbursement for real estate expenses of selling his San Leandro residence incident to transfer because residence which was sold was not at old station and he did not regularly commute between Tule Lake and such residence.

Mr. John MacIvor, an employee of the Department of Agriculture, Forest Service, requests reconsideration of our Claims Division's August 9, 1979 denial of his claim for reimbursement of real estate sales expenses incurred incident to his transfer from Tule Lake, California, to Hungry Horse, Montana. We conclude that expenses of selling his former residence in San Leandro, California, may not be reimbursed because the property sold was not the residence from which he regularly commuted to and from his former duty station at Tule Lake.

The record indicates that Mr. MacIvor lived at his residence in San Leandro, California, until his appointment in July 1977 to a position in Tule Lake, California, as a Wildlife Biologist with the Fish and Wildlife Service. For reasons related to his daughter's schooling, Mr. MacIvor's wife and child continued to reside at the San Leandro residence after he began his employment. In September 1977, Mr. MacIvor was offered and accepted a position with the Forest Service at the Spotted Bear Ranger Station at Hungry Horse, Montana, with a reporting date of October 9, 1977. By travel authorization dated October 5, 1977, Mr. MacIvor was transferred from Tule Lake, California, to Hungry Horse, Montana. This travel authorization authorized reimbursement of real estate expenses. An amendment to the travel authorization dated March 21, 1978, indicates that his wife

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and child would be moving from San Leandro and the employee from Tule Lake. Intending to relocate his family to Hungry Horse as soon as school facilities were available, Mr. MacIvor put the San Leandro residence up for sale, and on April 11, 1978, completed settlement. On April 21, 1978, having already reported to his new duty station and relocated his family in Hungry Horse, Mr. MacIvor filed a voucher which included a claim for reimbursement for real estate expenses of the sale of the San Leandro residence. The voucher was approved for payment by his local budget and finance officer on August 7, 1978, but payment was denied on August 30, 1978, by the National Finance Office, U.S. Department of Agriculture, and he appealed his claim to this Office on December 5, 1978.

Our Claims Division denied the claim on the grounds that real estate expenses may be reimbursed only in connection with the sale of the residence from which the employee regularly commutes to and from work on a daily basis at the old station at the time he was first definitely informed of his transfer to the new official station and that erroneous information as to payment and approval of the voucher by local officials provides no legal basis to waive the laws or regulations in individual cases. On appeal, Mr. MacIvor contends that his San Leandro residence meets the guidance set forth at para. 2-1.5g(3) of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973) for determining his actual place of residence. He claims reimbursement for residence sale expenses on this basis and because he believes agency personnel failed to fully inform him of travel and transportation benefits available to him as required by FTR para. 2-1.5e(2).

Reimbursement of certain relocation expenses is authorized by 5 U.S.C. 5724a (1976), which provides in pertinent part as follows:

"(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the

reimbursement of all or part of the following expenses of an employee for whom the Government pays expenses of travel and transportation under section 5724(a) of this title:

* * * * *

"(4) Expenses of the sale of the residence * * * of the employee at the old station and purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. * * *"
(Emphasis added.)

The regulations implementing 5 U.S.C. 5724a which are contained in the FTR, provide that an employee may only be reimbursed for the expenses of selling a residence at his old duty station. With exception for employees assigned to remote areas where family housing is not available, FTR para. 2-1.4i requires that the residence sold must be a residence "from which the employee regularly commutes to and from work." Under these regulations our Office consistently has held that when an employee returns to a residence only on weekends, or less frequently, such residence does not constitute a residence "from which the employee regularly commuted to and from work." Matter of Fred Kaczmarowski, B-189898, November 3, 1977, and cases cited therein.

In Matter of Duane S. Hardesty, B-191111, March 31, 1978, we considered circumstances very similar to those involved in Mr. MacIvor's case. In Hardesty the employee was appointed to a position at Fort Devens, Massachusetts. Because he believed the installation might be closed, he left his wife and daughter at the Florida residence in which the family had resided prior to his appointment. Upon his subsequent transfer to New Orleans, the employee relocated his family and claimed expenses incurred in selling their Florida residence. His claim was disallowed because he had not commuted regularly from that residence

to his former duty station in Massachusetts. Since Mr. MacIvor did not regularly commute between his family's San Leandro residence and his former duty station at Tule Lake, that residence does not qualify for real estate sale expenses reimbursement.

Mr. MacIvor's reference to FTR para. 2-1.5g(3) does not provide a basis for payment of the real estate sale expenses claimed. The actual residence determination to which that regulation refers is the designation made at the time an employee is appointed or transferred to a post of duty outside the conterminous United States which establishes the employee's entitlements to travel and transportation expenses upon separation, etc. As Mr. MacIvor suggests, the residence so designated need not be located at the employee's old duty station, but rather its location is a factual matter to be determined administratively in each case. However, that designation is not relevant in determining an employee's entitlement to real estate expenses, which are authorized only when both the employee's old and new duty stations are within the 50 States or other designated areas.

The contention that agency officials defaulted in their obligation to fully advise Mr. MacIvor as to his travel and transportation expenses entitlements is based on the following provision at FTR para. 2-1.5e(2) applicable to new appointees:

"(2) Agency responsibility. Because new appointees usually lack experience in Government procedures, each agency shall adopt special measures to provide full information to new appointees concerning the benefits which may be available to them for travel and transportation involved in reporting to their official stations. Special care shall be taken to inform appointees of the limitations on available benefits and to prevent any misinformation from being given to appointees who are not eligible for payment of travel and transportation costs."

We have reviewed the record and are unable to find that Mr. MacIvor was incorrectly advised concerning his entitlements as a new appointee in July 1977. Moreover, the travel authorization issued in connection with his subsequent transfer from Tule Lake, California, to Hungry Horse, Montana, correctly limits the reimbursement of real estate expenses to those incurred for sale of a residence "at old official station." Mr. MacIvor apparently misconstrued the amendment of that authorization to cover his wife's and daughter's travel and transportation from San Leandro as extending the authorization for real estate expenses to cover the sale of their San Leandro residence. He states that upon submission of his voucher for expenses incurred incident to his transfer to Montana he relied upon verbal approval by local officials of his claim for expenses of selling his San Leandro residence.

The record does not indicate that Mr. MacIvor was affirmatively induced to accept the transfer to Montana or sell his San Leandro home on the basis of erroneous advice as to his entitlements. However, insofar as he may have been led to believe that his real estate sale expenses would be reimbursed, our Claims Division correctly held that the receipt of information, later established to be erroneous, does not afford a legal basis for payment from appropriated funds. It has long been held that in the absence of specific statutory authority, the United States is not liable for the negligent or erroneous acts of its officers, agents or employees even though committed in the performance of their official duties. See 54 Comp. Gen. 747 (1975) and cases cited therein.

Mr. MacIvor further questions whether the indication by the agency or its representative that he would be reimbursed moving and house selling costs could be considered a condition of hire. As previously indicated he was a Government employee when transferred to a new job and his rights as to allowances for expenses incurred in connection with residence transactions were fixed by statute and regulations and therefore an unauthorized entitlement could not be a condition of hire.

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Because new appointees are not entitled to real estate transaction expenses, Mr. MacIvor was not entitled to expenses for selling his San Leandro residence incident to his appointment in July 1977. Had he sold his former residence and purchased a residence at Tule Lake at that time, he would not have been entitled to reimbursement for any expenses incurred in connection with either transaction. However, upon his transfer to Montana in October 1977, he would then have been entitled to expenses for selling his Tule Lake residence as well as for purchasing a residence in Montana. To reimburse Mr. MacIvor for expenses of selling his San Leandro residence because he did not choose to relocate his family incident to his appointment would in effect reimburse him for real estate expenses incident to his appointment. As to those expenses that are his own responsibility, the denial of real estate expenses claimed leaves Mr. MacIvor in essentially the same position as a transferred employee who relocated his residence at the time of appointment.

For the reasons indicated above, the denial of Mr. MacIvor's claim for real estate sale expenses is sustained.



Acting Comptroller General
of the United States